

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Auction of H Block Licenses

in the 1915-1920 MHz and 1995-2000 MHz

Bands

Comment Sought on Competitive Bidding

Procedures for Auction 96

AU Docket No. 13-178

**COMMENTS OF RDL MANAGEMENT, LLC**

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## **SUMMARY**

RDL Management, LLC (“RDL”), a fund formed to invest in companies in the wireless industry, including small and rural carriers and new entrants (collectively “Competitive Carriers”), supports the use of a fully transparent, simultaneous multiple round format auction for the H Block. RDL opposes the use of hierarchical package bidding (“HPB”), a single round sealed auction format and anonymous bidding because these auction mechanisms favor larger carriers over Competitive Carriers as demonstrated by the results of the only major auction of wireless spectrum where combinatorial bidding and anonymous bidding was used – Auction 73. Unless the Bureau wants history to repeat, Auction 73 is a cautionary tale that the Bureau should heed as it resulted in a number of problems: the largest wireless carrier securing a significant portion of the most valuable spectrum at lower prices than the other spectrum that was not subject to combinatorial bidding and the current interoperability problems plaguing the Lower A 700 MHz Block.

Many of the reasons put forth by the Bureau in support of HPB, a single round sealed bid format and anonymous bidding miss the mark. Combinatorial bidding makes an auction considerably more complex and favors large (and package bidders) over Competitive Carriers. Moreover, with respect to combinatorial bidding, it is a solution in search of a problem. Only one commenter suggested license areas larger than EAs – all of the rest of the industry that commented supported license sizes of EA or smaller.

RDL opposes anonymous bidding because it favors larger carriers over Competitive Carriers by limiting the price discovery that results from a completely open and transparent auction. The results of anonymous bidding are evident in Auction 73 where Competitive Carriers

were herded into the Lower Block A 700 MHz spectrum. As explained in greater detail below, this created the intractable interoperability problem that the Commission is now trying to solve.

Further, a single round sealed bid auction, which allows for no price discovery during the auction, also favors larger, well-healed bidders over Competitive Carriers who need the price discovery which occurs during a fully transparent SMR auction to fully value the spectrum being auctioned. Prior auctions and market transactions are of limited use in establishing the value of the G Block heightening the need for price discovery by the Competitive Carriers.

In addition, the Bureau's proposal to eliminate bid withdrawals further accentuates and favors larger bidders and package bidders over Competitive Carriers. As such, the Bureau should provide for bid withdrawals for all bidders.

Finally, the anti-collusion rule can have a chilling effect on normal commercial business discussions which would be pro-competitive and have no direct bearing on the auction. RDL recommends that the Commission revisit the anti-collusion rule because the most likely bidders to engage in these normal commercial business discussions are Competitive Carriers who need these arrangements to offer services, such as roaming, to their customers.

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**COMMENTS OF RDL MANAGEMENT, LLC**

RDL Management, LLC (“RDL”), by its undersigned counsel and pursuant to the Wireless Telecommunications Bureau’s (“Bureau”) July 15, 2013, *Public Notice* in the above-captioned proceeding,<sup>1</sup> hereby respectfully comments on the competitive bidding procedures for Auction 96. In summary, RDL supports the Bureau moving forward to auction the H Block licenses in the 1915-1920 MHz and 1995-2000 MHz bands via a fully transparent, simultaneous multiple-round (“SMR”) auction with bidding credits of 15 and 25% for very small and small businesses. RDL, however, opposes the use of hierarchical package bidding (“HPB”), a single round sealed bid auction and anonymous bidding. Further, the Bureau must include bid withdrawal rights, especially if it uses any form of combinatorial bidding. Finally, the Bureau should revise its anti-collusion rules to limit its impact on ordinary commercial discussions that have no material impact on bidding.

In support, the following is shown:

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<sup>1</sup> *Auction of H Block Licenses in the 1915-1920 MHz and 1995 -2000 MHz Bands; Comment Sought on Competitive Bidding Procedures For Auction 96*, AU Docket No. 13-178, DA 13-1540 (rel. July 15, 2013) (“Notice”).

## **I. INTRODUCTION.**

RDL is a fund formed to invest in companies in the wireless industry, including small and rural carriers and new entrants (collectively “Competitive Carriers”).<sup>2</sup> The H Block is a valuable source of needed spectrum for Competitive Carriers because it is adjacent to existing personal communications services (“PCS”) spectrum which has already been developed. In addition, given that there has been no auction of any significant amount of wireless spectrum since Auction 73 in early 2008, the H Block has become increasingly more important for Competitive Carriers as the need for wireless spectrum, to support the exponential increase in data services, has grown. Furthermore, as consolidation continues its unending drumbeat in the wireless industry, the only hope for additional competition in the wireless industry is via new entrants and expansion of existing smaller carriers through spectrum auctions. Therefore, it is critical that the Bureau get the auction procedures right for the H Block to ensure that Competitive Carriers are able to fully participate in Auction 96 and have a fair chance to acquire additional spectrum. As a potential investor in Competitive Carriers, RDL has an interest in ensuring that the auction procedures for Auction 96 allow Competitive Carriers a fair shot at acquiring licenses in the H Block.

In summary, the Bureau must make it a priority not to repeat mistakes of the past and to create a level playing field for all participants. First, the Bureau should not use combinatorial, or “package” bidding, which unfairly disadvantages smaller bidders and new entrants, and is contrary to the Commission’s stated “building blocks” approach. Second, the Bureau should not conduct a single round sealed bid auction for the H Block. Third, the Bureau should conduct an open, as opposed to blind, auction, which will improve the flow of information among all bidders

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<sup>2</sup> RDL is a very small business headquartered in Dallas, Texas formed by several experienced senior wireless executives with significant experience in wireless auctions.

and improve the prospects for success of the Competitive Carriers that were shut out of Auction 73. Fourth, the Bureau should allow bid withdrawals in Auction 96, which will prevent the auction from being tilted in favor of package bidding. Fifth, the Bureau should refine and clarify its anti-collusion rules (which at present will prevent carriers from conducting regular business during the pendency of the auction).

## **II. COMBINATORIAL BIDDING TILTS THE AUCTION PLAYING FIELD IN FAVOR OF PACKAGE BIDDERS.**

The Bureau proposes to conduct Auction 96 using a simultaneous multiple-round auction format.<sup>3</sup> RDL supports the use of an SMR auction for the H Block. The principals of RDL have decades of experience in the wireless industry and collectively have participated in eight prior Commission spectrum auctions. Their experience is that an SMR auction provides the best opportunity for spectrum to be acquired both by all carriers and new entrants. A fully transparent SMR auction allows each participant to engage in price discovery which allows the bidders to understand the value other bidders may place on the spectrum. This makes it more likely that the Competitive Carriers will not only be able to secure the necessary funds to acquire the spectrum, but also the funds necessary to develop the spectrum. Without this important price discovery, Competitive Carriers, who typically have fewer resources than the larger incumbent carriers, will be at a distinct disadvantage. In addition, SMR bidding on individual spectrum blocks allows the spectrum to be awarded to the bidder who values it most because the auction procedures do not impede such bidders from being the high bidder on the spectrum they value most.

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<sup>3</sup> Notice at ¶16.

**A. Combinatorial Bidding Adds Unnecessary Complexity Which Could Lead to Unintended Consequences.**

The Bureau has proposed to use a form of package bidding called hierarchical package bidding (“HPB”) where economic area (“EA”) licenses would be aggregated into major economic area (“MEA”) packages.<sup>4</sup> The use of HPB, however, would make the auction more complex and would tilt the playing field in favor of larger, incumbent wireless carriers to the detriment of Competitive Carriers. Indeed, it may allow larger bidders to acquire certain licenses at a discount. Combinatorial bidding creates a “threshold problem,” which occurs when small bidders cannot raise their bids enough to beat out a large bidder, even though the aggregate value of the small bidders may be greater than the large bidder’s value. This also could lead to substantial competitive problems if the package bidder is able to acquire spectrum at substantially lower prices per MHz/POP than bidders on the individual licenses. This is not mere conjecture -- the combinatorial bidding process in Auction 73 appears to have played a major role in enabling Verizon to acquire the C Block at a substantially lower per-pop price than the other 700 MHz spectrum.

Auction 73 in particular provides a cautionary tale that should be studied carefully by the Bureau. In Auction 73, the only other major spectrum auction of wireless broadband spectrum where combinatorial bidding was used, other Competitive Carriers expressed concern about the use of combinatorial bidding. For example, MetroPCS Communications, Inc. (“MetroPCS”), a sophisticated Competitive Carrier, observed that “[a]llowing combinatorial bidding would add unneeded complexity to the auction and create a serious risk of unintended and undesirable consequences without providing any substantial public interest benefits” and in doing so the Commission “would introduce a radical change from prior auction procedures which could

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<sup>4</sup> *Id.* at ¶17.

potentially delay or deter participation by potential bidders.”<sup>5</sup> In addition, a wide majority of other Competitive Carriers in Auction 73 opposed combinatorial bidding for any block of the 700 MHz Band auction.<sup>6</sup> Indeed, ironically, Verizon, who ultimately benefitted from combinatorial bidding in Auction 73, opposed its use.<sup>7</sup> In addition, US Cellular made compelling filings in the Auction 73 proceeding, pointing out the difficulties associated with conducting an auction with both combinatorial bidding and anonymous bidding procedures.<sup>8</sup>

These concerns were well founded. When the smoke cleared, Auction 73’s results were just as many Competitive Carriers had predicted and feared. While the largest carriers were able to acquire the lion’s share of the spectrum, most Competitive Carriers (because the auction was blind and the auction process favored the larger carriers) were unpleasantly surprised to find that they had been stranded, along with the other Competitive Carriers, in the Lower 700 MHz A Block. Specifically, Verizon acquired a near-nationwide paired 22 MHz Upper 700 MHz C Block license, while AT&T effectively consolidated the Lower 700 MHz B Block. The spectrum subject to combinatorial bidding was essentially awarded to Verizon at prices per MHz less than the spectrum which was not subject to combinatorial bidding. The Commission should do everything in its power to avoid a similar result with Auction 96 – which means, among other things, to not use combinatorial bidding.

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<sup>5</sup> See MetroPCS 700 MHz Comments at 20; MetroPCS 700 MHz Reply Comments at 12-17 in *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band License and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Further Notice of Proposed Rulemaking*, FCC 07-72 (rel. April 27, 2007), 72 Fed. Reg. 24238 (May 2, 2007) (“700 MHz Proceeding”)(“MetroPCS 700 MHz Comments” and “MetroPCS 700 MHz Reply Comments”).

<sup>6</sup> See the filings of the following commenters in the *700 MHz Proceeding*: US Cellular Comments at 9-14; Rural Cellular Association (“RCA”) Comments at 14; Cellular South Comments at 20-22; Rural Telecommunications Group (“RTG”) at 15-16; Leap Wireless Comments at 9-10; Alltel Comments at 10-11; SpectrumCo Comments at 16-18; Blooston Rural Carriers Comments at 9-10; and Aloha Partners Comments at 5-8.

<sup>7</sup> See Verizon Wireless Comments in the *700 MHz Proceeding* at 38-42.

<sup>8</sup> See *Ex Parte* of US Cellular Corporation, WT Docket Nos. 06-150, 06-169, 96-86, 05-265, and 00-139 and PS Docket No. 06-229 (filed July 10, 2007).

**B. Combinatorial Bidding Undermines the Commission’s Policy Objectives to Promote Broadband to Rural Areas.**

Combinatorial bidding favors bidders for urban areas over rural areas and can frustrate the Commission’s policy objective to increase broadband adoption. For example, the bidder on the Dallas MEA may not have any immediate intent (or any intent) to launch service in the respective less populated EAs surrounding the Dallas EA (such as the Abilene or San Angelo, Texas EAs). As such, awarding the less populated, more rural EAs to the package bidder would have two consequences – the winner may not serve the less populated, more rural area for some time (if at all) and Competitive Carriers, who may want to serve that area, are denied the spectrum necessary to do so. In addition, the proposed construction requirement, which is population based, would not force the package bidder necessarily to build-out the less populated, more rural EAs.<sup>9</sup> Accordingly, adoption of HPB would have a negative effect on the Commission’s policy to try and move broadband out to rural areas. While the Commission cannot go back in time to correct the errors that marred Auction 73, it can refrain from making the same mistakes in the upcoming H Block auction.

**C. Combinatorial Bidding is Considerably More Complex Than a Simple SMR Auction.**

In proposing HPB, the Bureau posits that HPB “considerably simplifies bidder strategy ... compared to other forms of package bidding.”<sup>10</sup> The Bureau misses the point. While HPB may result in simpler bidding strategy than a combinatorial auction where the bidder makes their own packages, the point is that the use of combinatorial bidding complicates bidding strategy

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<sup>9</sup> RDL supports the Commission’s adoption of population based, rather than geographic based, build-out requirements. If the Commission tries to solve the rural/urban problem with geographic build-out requirements, it will introduce a whole new set of problems which again will harm Competitive Carriers.

<sup>10</sup> *Id.* at ¶18.

over a simple SMR auction and the benefits of combinatorial bidding are outweighed by the costs. This complexity creates a serious risk of unintended and undesirable consequences without providing any substantial public interest benefits. For example, the interaction of the bidder eligibility and combinatorial bidding rules adds layers of complexity to the bidding. Not only do bidders have to manage eligibility when bidding on licenses which may be subject to a combinatorial bid, but also had to worry about being stranded with non-provisionally winning bids which might mature to actual winning bids. In effect, this means that funds are committed twice – once to the non-provisionally winning bid and once to another bid.

A bidder that plans to bid on a single license, as opposed to a package, has to take into account that it may not be the high bidder on a license merely because the combinatorial bidder values some other license in the package more. For example, if the Bureau moves forward with packaging EAs into their corresponding MEAs, the Abilene or San Angelo, Texas EA would be included in the Dallas MEA. If a bidder on the Dallas MEA valued the Dallas EA in the package more than the bidder on the Dallas EA separately, the Dallas MEA bidder would be the winning bidder – even though the bidders on the individual Abilene and San Angelo, Texas EAs may value those licenses more than the bidder on the Dallas MEA. This does not simplify the bidding strategy for the individual license bidder – but rather complicates it.<sup>11</sup> Rather than having to only watch the specific EA that they are interested, the bidders for the respective EAs are required to watch the bidding for the Dallas EA because the high bid on the Dallas EA may well determine whether their bid on the Abilene or San Angelo EAs would be successful. Because this complication would be pushed on to the Competitive Carriers who are less likely to have the resources to evaluate and undertake such a complex auction, it is unlikely that they would be

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<sup>11</sup> Of course, combinatorial bidding may simplify the auction for the package bidder. However, the Bureau should be concerned about whether Competitive Carriers with limited resources are able to participate, not in making the auction easier for the larger, incumbent carriers who have the resources.

successful. The results of Auction 73 clearly demonstrate this. The package bid was the high bid at a price that was lower than the individual Lower 700 MHz blocks.

This problem is compounded when the individual market bidders cannot communicate with each other due to the anti-collusion rules. The approach the Commission has taken to address this concern is to reactivate dormant individual bids and to count them toward the aggregate price of the individual bids in comparison to the package bid. There are, however, several problems with this approach. First, an auction participant may find itself with a high bid that it had decided not to pursue. This occurs when an individual license bidder initially is outbid by a package bid, but then the losing individual license bid is resurrected when another "losing" bidder increases its bid by a margin that causes the non-package bids in the aggregate to surpass the package bid amount. Resurrected "active" bids of this nature may cause a bidder to exceed its eligibility. While the Commission is willing to maintain the resurrected bid notwithstanding the eligibility excess, there are potentially adverse consequences. Specifically, the resurrected bidder will be unable to continue to bid in any meaningful fashion on the resurrected license since the Commission's willingness to look the other way at the lack of eligibility is a one-time only event. Worse yet, the resurrected bidder may not have the funds needed to consummate the acquisition of the license on which the resurrected bid stands – especially if it has used its eligibility to bid on another block in which it is the high bidder.

In addition, there is the problem of bidding eligibility when a dormant bid is reactivated. When a dormant bid is reactivated, a bidder is allowed to maintain this "extra" eligibility for one round – the round in which the dormant bid is reactivated. However, this "extra" eligibility cannot be used for anything else, and thus would prevent the bidder from increasing their bid in order to continue to challenge the package bidder. The Bureau, in order to correct this problem,

should allow for limited increased eligibility in the case of reactivated bids to allow bidders to continue competing against the package bidder for licenses that have essentially reappeared to them. Without doing so, the Bureau is constraining bidders who are bidding on individual licenses from providing sufficient competition to the package bidder –biasing the auction in favor of the package bidder.

**D. Combinatorial Bidding Upsets the Commission’s Long-Standing Building Block Approach to Auctions.**

Combinatorial bidding also undermines a market-driven “building block” approach. The use of a combinatorial bidding design harms Competitive Carriers by allowing large incumbent licensees to acquire spectrum at the expense of Competitive Carriers who may have a more targeted approach to a specific geographic area. Prior SMR auctions have clearly demonstrated that the Commission’s building block approach works. Many bidders are able to aggregate the blocks of spectrum that they need for their business plan using a plain SMR auction without combinatorial bidding. The plain SMR auction also allows bidders to aggregate the spectrum in the blocks that their business plan desires rather than a predefined block that the Bureau selects. This kind of command and control auction procedures is not necessary and skews the auction towards certain prospective bidders over others.

The Bureau posits that HPB might “allow for significant economies of scale that may well correspond to a variety of business plans.”<sup>12</sup> While HPB might allow for significant economies of scale, it is not clear that such economies of scale will result in bidders, who value the spectrum the most, paying the most for such spectrum and may very well deter other bidders who might otherwise have participated in a plain SMR auction. It is not clear that bidders cannot get the same economies of scale by aggregating spectrum during the course of a plain SMR

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<sup>12</sup> Notice at ¶18.

auction. Indeed, in most recent wireless auctions, bidders have been successful in aggregating blocks of spectrum. The SMR auction format allows bidders to aggregate spectrum through multiple rounds and the Bureau has not provided any evidence that bidders in Auction 96 would not be similarly successful. The Commission has always favored the “building block” approach over the disaggregation approach that HPB would require, and the Commission's prior auctions do not show that a problem exists with the building block approach that requires a radical solution such as HPB. In addition, the fact that only a single block of spectrum is being auctioned should not change the outcome.

**E. Combinatorial Bidding on a Single Block is as Complex, if not More Complex, than Combinatorial Bidding on Multiple Blocks.**

The Bureau posits that the complicating factors present in the only time combinatorial bidding has been used for wireless broadband spectrum – Auction 73 – are not present in Auction 96.<sup>13</sup> The Bureau observes that in Auction 73, the combinatorial bidding applied over 5 blocks of spectrum and there were several other blocks of spectrum which covered the same geographic area.<sup>14</sup> As such, the Bureau points out that they needed special procedures to allow bidders to shift their bidding strategy across multiple blocks.<sup>15</sup> The Bureau then concludes that as result, bidding rules implementing HPB for a single block auction – such as Auction 96 -- would be considerably simpler.<sup>16</sup>

Again, this misses the point. First, the issue is not whether HPB is or is not more complicated than the combinatorial bidding used in Auction 73. The issue is whether combinatorial bidding in general prevents Competitive Carriers from having a fair shot at acquiring spectrum. In any event, what the Bureau is proposing for Auction 96 is considerably

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<sup>13</sup> *Id.* at ¶19.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

more complicated from the bidders' perspective than Auction 73. In Auction 73, the package only applied to 5 regional EA groups – so it effectively only affected 5 licenses. Here, the Bureau is proposing package bidding for all licenses in Auction 96. As such, therefore, Auction 96 will be substantially more complicated than Auction 73. Second, what the Bureau fails to appreciate is that in Auction 73, the combinatorial bidder – Verizon – was able to acquire all five blocks of spectrum with limited competition and at prices which were considerably lower per MHz than the other blocks of spectrum which were not subject to combinatorial bidding. One of the reasons for this is that packages typically require larger upfront payments and will ultimately require higher bids than the individual blocks that comprise the package. An MEA package that includes the Dallas EA will obviously require a higher overall bid than a bid only for the Abilene EA. Given that Competitive Carriers typically have fewer resources than the larger incumbent carriers, once the price of the package exceeds the resources a Competitive Carrier has, the large incumbent carrier will essentially not have any competition from the smaller Competitive Carriers for the package bid. Moreover, given the interplay of the auction eligibility rules with package bidding, once a bidder ceases to bid on a package, it is virtually impossible for the bidder to regain sufficient eligibility to rebid on the package if the prices for individual licenses exceed what a bidder is willing to pay.<sup>17</sup>

Combinatorial bidding also introduces additional complexity because a bidder may be the non-provisional high bidder for a license and may be unable to move that eligibility or bid amount to another spectrum block that may be of interest to the bidder.<sup>18</sup> While it is true that a

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<sup>17</sup> This is the case even if a bidder once displaced off a package continues to maintain its eligibility through placing individual bids on other individual licenses or packages. In that case, all of the individual licenses or packages would have to be topped by other bidders to free up eligibility to rebid on another package. RDL principals have personal experience in how difficult this can be and how it is unlikely to be successful.

<sup>18</sup> This problem is exacerbated when the Bureau does not provide for a bidder of a non-provisionally winning bidder to withdraw their bid so that they can move that eligibility to another spectrum block, *See infra* at Section V.

bidder that is interested in the Abilene, Texas EA may only have one opportunity to acquire that spectrum in Auction 96, a Competitive Carrier could be bidding on spectrum for a variety of reasons other than perhaps acquiring spectrum in a particular service area. For example, a Competitive Carrier may be seeking a certain kind of market – such as a market in the 75-100 market size – rather than a particular market (such as Abilene, Texas). As such, the Competitive Carrier could very well be satisfied with an alternative market with the same characteristics and, if it is not the high bidder on the Abilene, Texas EA, it could move its bids away from Abilene, Texas to another market. However, HPB would make even such a strategy difficult as any alternative spectrum block may have the same auction dynamics with respect to the bidding being driven by blocks which are part of the package instead of individual licenses. As a result, HPB over the entire auction is much more complicated than the one that was implemented in Auction 73.

**F. Combinatorial Bidding is Unnecessary.**

The HPB format should not be used because it is a solution in search of a problem. The Commission in the *H Block NPRM*<sup>19</sup> “proposed to license the H Block on an EA basis and sought comment on this approach.”<sup>20</sup> As the Commission observed in the *H Block Order*, “[c]omments on the proposal were mixed.”<sup>21</sup> Indeed, the Commission itself observed that “[s]ome commenters, both small and large carriers, supported EA-based licensing, while other commenters opposed EAs and advocated license areas smaller than EAs”<sup>22</sup> while only one

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<sup>19</sup> *In the Matter of Service Rules for Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket 12-357, Notice of Proposed Rulemaking, 27 FCC Rcd 16258 (2012)(“*H Block NPRM*”).

<sup>20</sup> *Id.* at 35.

<sup>21</sup> *In the Matter of Service Rules for Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, FCC 13-88 (rel. June 27, 2013)(“*H Block Order*”).

<sup>22</sup> *Id.* at 36.

commenter supported larger license areas.<sup>23</sup> When AT&T, the Competitive Carrier Association (CCA), C.Spire, MetroPCS, Sprint, T-Mobile, Rural Telecommunications Group (RTG) and US Cellular all agree that the license area should not be larger than EA, the Bureau must take notice. Indeed, the Comments clearly show that there is not a groundswell of support for combinatorial bidding on blocks larger than EAs. Accordingly, the Bureau should not adopt HPB.

### **III. A SINGLE ROUND SEALED BID FORMAT FAVORS LARGE CARRIERS.**

The Bureau proposes as an alternative to SMR a single round sealed bid auction.<sup>24</sup> The Bureau suggests a single round sealed bid auction because “Auction 96 offers licenses in only a single spectrum block and a single round auction may simplify the process for bidders and reduce the costs of auction participation.”<sup>25</sup> While a single sealed bid auction may result in less complexity and cost less to participate -- the more important issue, however, is whether such a format will tilt the playing field in favor of larger incumbent bidders. The answer is plainly yes. When distributing licenses through competitive bidding, Congress has instructed the Commission to “promote[] economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”<sup>26</sup> A single round sealed bid auction will not serve the statutory objective of “disseminating licenses among a wide variety of applicants.”

The use of single sealed bid auction reduces the possibility of Competitive Carriers being able to meaningfully participate and have a reasonable possibility of winning. First, a single round sealed bid does not allow bidders to participate in price discovery. The Commission has

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<sup>23</sup> The Commission identified only one party – Savari, Inc. – who advocated anything larger than EAs. Savari also advocated use of the H Block for Intelligent Transportation Systems (ITS).

<sup>24</sup> Notice at ¶23.

<sup>25</sup> *Id.*

<sup>26</sup> 47 U.S.C. § 309(j)(3)(B).

typically found that this information is of value to bidders in the auction. For example, the Commission has recognized that “information that has typically been provided during FCC auctions may be of value in helping bidders to form more accurate and confident assessments of license values.”<sup>27</sup> While the H Block spectrum is immediately adjacent to existing PCS spectrum, the PCS spectrum may not provide a meaningful indicator of the value of the H Block spectrum for several reasons. First, any auction results for PCS spectrum are stale. It has been a number of years since PCS spectrum was auctioned making spectrum values paid in those auctions of limited value.<sup>28</sup> Second, recent market transactions in PCS spectrum are of limited value. While there have been market transactions in PCS spectrum since the PCS auctions, those sales have traditionally included multiple blocks or other aspects that may not necessarily apply to value of the H Block. For example, spectrum that is sold as a result of regulatory divestitures in connection with a business combination may be a poor marker for the value of spectrum which is being auctioned. The value of divested spectrum may be driven by regulatory timeframes and the overall value of the business combination – not the price of an individual spectrum block. Third, PCS licenses were licensed on a BTA/MTA basis – which is obviously different than the proposed geographic license areas for H Block – EAs and MEAs. Moreover, individual spectrum blocks have not been recently sold for many of the EAs, thus making recent transactions of less relevance in determining the value of many EAs. Fourth, the technical rules

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<sup>27</sup> *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction No. 66*, AU Docket No. 06-130, Public Notice, FCC 06-47 at ¶ 149 (released Apr. 12, 2007).

<sup>28</sup> Other auctions of spectrum are similarly less of an indicator of value in Auction 96. Advanced wireless services -1 spectrum (AWS) and 700 MHz spectrum prices are not necessarily comparable to H Block spectrum because of the amount of spectrum that was auctioned at that time, the physical characteristics of the spectrum, and the clearing that was necessary to use the spectrum. Accordingly, bidders may not have a good auction guidepost to determine auction values for spectrum in Auction 96 – putting a higher value on price discovery that occurs during an SMR auction.

relating to emission limits are slightly different than PCS which may drive higher equipment costs – and may reduce the value of the H Block over other recently auctioned spectrum.<sup>29</sup>

Second, auctions of other spectrum are of less value in setting the value of the H Block. The last auction of any significant amount of wireless broadband spectrum was held in early 2008 – and the industry has undergone considerable change since 2008. For example, the industry has seen the exponential rise in data services, which has fueled the need for additional spectrum. Moreover, the gulf between the largest carriers and the next tier of carriers has grown even larger. Whereas mid-tier carriers, such as MetroPCS, Leap Wireless and U.S. Cellular, reduced the gap of the largest carriers to the next tier down, these carriers have either been acquired, are in the process of being acquired, or are divesting spectrum and markets. The gap between the largest carriers and the rest of the wireless industry has grown considerably and will grow further as time goes on.

What does this all mean? Competitive Carriers will need the price discovery that comes with a SMR auction. Without it, the tilted auction field will result in only larger incumbent bidders being successful. A single round sealed bid also increases the risk of a “winners curse”. While the bidder may be successful in acquiring the spectrum, they may pay so much more than others value the spectrum that banks and investors may be unwilling to invest to construct the necessary networks. As a result, Competitive Carriers run the risk of either not being able to secure the necessary funds to be successful in the auction, or not being able to finance the construction of networks on such spectrum.

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<sup>29</sup> See 47 C.F.R. 27.53(h)(2)(iii) and (iv) establishing that for operations in the 1915-1920 MHz band, the power of any emission between 1930-1995 MHz shall be attenuated below the transmitter power (P) in watts by at least  $70 + 10 \log 10(P)$  dB, and for operations in the 1995-2000 MHz band, the power of any emission between 2005-2020 MHz shall be attenuated below the transmitter power (P) in watts by at least  $70 + 10 \log 10(P)$  dB.

#### IV. ANONYMOUS BIDDING IS NOT NECESSARY AND PREVENTS PRICE DISCOVERY FAVORING LARGER CARRIERS.

Bureau also proposes to adopt “certain procedures for limited information disclosure or ‘anonymous bidding’ for Auction 96.”<sup>30</sup> Under the proposed procedures, the “(1) bidders’ license selections on their short-form applications (FCC Form 175), (2) the amounts bidders’ upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders’ placing bids and taking other bidding-related actions”<sup>31</sup> including “identities of bidders placing specific bids or withdrawal (if permitted) and the net bid amounts”<sup>32</sup> would not be disclosed until after the close of the auction. The Bureau points out that “the Commission originally proposed limited information disclosure procedures ... in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of a simultaneous multiple-round auction may be enhanced if such information is withheld until after the close of the auction.”<sup>33</sup>

Use of anonymous bidding tends to favor those bidders who need less price discovery and/or have sufficient scale to be able to drive infrastructure and device manufacturers to develop products for their spectrum – which is typically the larger carriers. The Commission has previously recognized that there were some pro-competitive uses that could be made of bidder identity information in the course of an auction.<sup>34</sup> Auctions are intended to establish a spectrum allocation process that will deliver licenses to those that value them most because they are in a position to put the licenses to the highest and best use. This outcome is only possible if bidders

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<sup>30</sup> Notice at ¶24.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at ¶25.

<sup>33</sup> *Id.* at ¶29.

<sup>34</sup> *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 Bands, et. al.*, WT Docket No. 06-ISO, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, WT Docket No. 07-166, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) (“700 MHz Order”).

have sufficient information about the market being entered to make an intelligent valuation decision. Open bidding allows participants to engage in meaningful price discovery – which includes why certain blocks or licenses may be being bid higher than others. Perhaps the most important market information is knowing who the competitors are, what spectrum they are acquiring, and how much spectrum they have.

Knowing the identity of the bidders on particular spectrum is important information particularly given the current structure of the wireless market that has two dominant participants. Competitive Carriers are well aware of the critical importance of economies of scale with respect to equipment availability, and are likely to structure their bids accordingly given additional bidder information. For example, a Competitive Carrier may be willing to bid more for a license if it knows that AT&T and Verizon also are acquiring licenses, with an eye towards the greater likelihood of this band receiving equipment manufacturers' attention. In Auction 73, the Lower A Block licenses were less expensive than the Lower B Block licenses largely because AT&T was bidding up the prices in Lower B Block as it sought to gain a major position there and, as a result, were essentially herded into the 700 MHz Lower A Block. Without information on what spectrum blocks the larger bidders were bidding, the bidders on the 700 MHz Lower A Block were blind to the fact that when the smoke cleared, the vast majority of the 700 MHz Lower Block A licenses were held by Competitive Carriers and not by AT&T, who had the spectrum immediately adjacent to the A Block. As a result, AT&T was able to mandate that equipment used on its spectrum was not interoperable with the A Block causing many of the A Block licenses to have to seek waivers of the construction requirements because they could not secure the necessary equipment to construct their networks. Had Auction 73 not been a blind auction,

the Commission may have seen a greater dispersion of licensees among the bands, which may have halted the current Lower 700 MHz interoperability fiasco before it started.

The Commission runs a similar risk with having anonymous bidding in Auction 96. While the H Block is immediately adjacent to existing PCS spectrum, it is not currently included in handsets using the A-F PCS blocks. Moreover, the adjacent block of spectrum – the G Block – is held by a single licensee who may not have any interest in making sure that the G Block and the H Block equipment is interoperable. This problem is heightened by the fact that the emission power standards for the H Block are slightly different than the other PCS spectrum, including the G Block – making it less likely that equipment that is currently being developed for the PCS spectrum will necessarily be useable on the H Block without the efforts of larger PCS carriers winning the spectrum. If the auction is anonymous, bidders will have no idea whether the G Block licensee – or the other PCS licensees – are in fact bidding on the spectrum and are winning.

RDL is mindful of the concern that incumbent carriers can use bidder identity information to block entry by potentially disruptive competitors. Nonetheless, the principals of RDL, having participated in multiple “open” auctions, still consider the benefit to Competitive Carriers of having bidder information to far outweigh the risk that a Competitive Carrier will be targeted and blocked from entering a new market by an incumbent.

All auction procedures are a balancing act between ensuring robust competition and ensuring that all carriers and new entrants have an even chance at acquiring spectrum. The use of anonymous bidding procedures will tip the balance too far and make it much more difficult for Competitive Carriers to participate and win at Auction 96.

## V. THE COMMISSION MUST PROVIDE FOR BID WITHDRAWALS.

The Bureau proposes to not permit “any bids, provisionally winning or otherwise, to be dropped or withdrawn from consideration in Auction 96.”<sup>35</sup> The Bureau advances this proposal based on its belief that “the potential benefits of withdrawn or dropped bids in facilitating aggregations are far lower than they would be in a typical SMR auction.”<sup>36</sup> The Bureau posits that the benefits of allowing bids to be withdrawn are lower in Auction 96 than a normal SMR auction because package bids allow bidders seeking to aggregate licenses to reduce the risk of winning to only a subset of what the bidder needs to aggregate for its business plan.<sup>37</sup> The Bureau then claims that allowing bid withdrawals can be more disruptive to an auction where combinatorial bidding is used than one where it is not.<sup>38</sup>

Bid withdrawals are an important safety valve feature for SMR auctions, with or without combinatorial bidding, and the Bureau should allow them. If the Bureau uses HPB, at a minimum, it also must allow non-provisional high bidders on individual licenses unlimited withdrawals. In Auction 73, the Bureau recognized that bid withdrawals were an important feature of package bidding. The Bureau found that “since HPB considers bids made in previous rounds when determining provisionally winning bids, it is possible that a bid for a package or a license subject to package bidding can become provisionally winning many rounds after it is placed.”<sup>39</sup> The Bureau then went on to allow one bid withdrawal by a non-provisional winning bidder for an individual license, which was part of the package. As noted above, there is a considerable problem in an HPB auction of dormant (non-provisional winning) bids becoming

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<sup>35</sup> Notice at ¶73.

<sup>36</sup> *Id.* at ¶74.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought Competitive Bidding Procedures for Auction 73*, AU Docket No. 07-157, Public Notice, DA 07-3415 (rel. Aug. 17, 2007) at ¶ 82.

reactivated when combinatorial bidding is used. Unfortunately, the Bureau's proposal to not allow any bid withdrawals – even of dormant bids – is strongly biased in favor of the package bidder, and against the individual license bidder.

**A. Bid Withdrawals are Necessary in Auctions Where Combinatorial Bidding is Used.**

The Bureau is wrong that in an HPB auction the benefits of bid withdrawals are reduced. While HPB does allow for bidders seeking to aggregate licenses to have less need for bid withdrawals because packages of individual licenses have already been aggregated, that presupposes that the pre-set packages match the needs of all or most bidders. HPB does little to solve the problem of those bidders who want to aggregate multiple packages (such as all of Texas), those who intend to aggregate licenses on a less than the MEA basis (e.g., Abilene and San Angelo), or those who plan to aggregate licenses in ways different than the pre-set packages established by the Bureau. Bid withdrawal have been a feature of auctions since the very first auctions and the fact that some pre-established packages exist do not significantly reduce the benefits bidders gain from being able to ensure that they are not left holding bids that they do not want.

Further, combinatorial auctions present a special problem for bidders who are not bidding on the package – they can become the non-provisional high bidder on a package and at any time they could become the high bidder. While a bidder that is interested in only a single license in a single geographic area may not have a significant benefit from being able to withdraw bids in a HPB auction, if a bidder is bidding on a number of licenses and some are non-provisional high bids, the bidder will suffer two adverse consequences. First, the bidder will lose that eligibility to bid that same eligibility on other licenses. Second, if the bidder wants to maintain their eligibility, they can bid on other licenses, but they run the real risk that the package bid does not

win and they have to honor their now winning provisional bid. This risk was one of the reasons that the Commission allowed non-provisional high bidders in Auction 73 a one-time opportunity to withdraw their non-provisional high bid so that they could use that eligibility elsewhere without the risk of having to honor the non-provisional high bids. Even then there is a risk that allowing just one bid withdrawal benefits the package bidder over the individual license bidder. While the benefit of bid withdrawals may be less in Auction 96 than in Auction 73 because there is only one license per geographic area, the Bureau should not presuppose that bidders are only interested in a single geographic license and, faced with not winning a package bid, would want to move that eligibility elsewhere.

**B. Eliminating Bid Withdrawals Limits Competition in the Auction.**

Limiting bid withdrawals reduces competition for licenses since bidders who place non-provisional winning bids will be stuck with the non-provisional high bid and unable to bid on other licenses. This problem could be exacerbated by a bidder that places bids on individual licenses in two different packages. In that instance, if they are the non-provisional high bidder on both, they cannot withdraw one of the non-provisional high bids and use those funds to drive up the price of the other non-provisional winning bid – and perhaps exceed the package bid price. As a result, the package bidder may get the package for less than what they would have had to pay had the individual bidder been able to move their bid amounts. This results in the auction not necessarily awarding the licenses to those who value the licenses most. Further, since it is more likely that Competitive Carriers will be bidding on individual licenses, the playing field is tilted in favor of the combinatorial bidder – who is most likely going to be the larger incumbent licensees.

As a consequence, the Commission should allow bidders to withdraw bids for individual licenses multiple times and be permitted to rebid for the individual licenses at any time during

the auction. Just as the standard SMR format gives bidders the flexibility to bid up to the market value of a license, bidders should be allowed to withdraw and rebid an individual license in a combinatorial bid auction. Further, unlike withdrawals on individual licenses without package bidding, allowing bidders to withdraw bids which may later become provisionally winning bids does not allow bidders to game the system or disrupt the process. Allowing bidders the flexibility to withdraw and rebid will ensure that robust competition develops for the individual licenses.

The Bureau also should not adopt the one round withdrawal rule used in Auction 73. Allowing dropped bids in only one round may force many bidders away from a non-winning provisional bid at an early stage. For instance, due to eligibility restrictions and auction pace, it is possible to foresee a situation where a bidder is forced to use its dropped bid early in the auction - and thus prevent them from bidding for that license later in the auction even if the price for the individual license is grossly disproportionate to the other licenses. The bidder faces a Hobson's choice: to either withdraw its individual bid and potentially pay the withdrawal penalty, or forego bidding on a lower priced license. This choice does not benefit the public interest since the result is licenses not going to those who value them most.

In addition, under the Bureau's proposal, bidders for packages do not even have the ability to withdraw their bids. Thus, these dropping bid and bid withdrawal procedures will serve to eliminate potential individual license bidders from further bidding on packages, and competing with a package bidder. This clearly benefits well-healed package bidders by deterring individual bids, as well as foreclosing the ability of individual license bidders to provide a check on the package bidder getting a license for less than the on the market price.

**C. Bid Withdrawal Penalties Used in Prior SMR Auctions Effectively Deter Insincere Bidding.**

The Bureau completely ignores the deterrence value bid withdrawal penalties have on bidders using withdrawals for strategic reasons. In prior SMR auctions, bid withdrawals were accompanied by a penalty that the withdrawing bidder will pay of the difference between what the bid that was withdrawn was and the winning bid for that license. Since a bidder has little assurance that if it withdraws its bid another bidder will bid higher than its bid amount, the bid withdrawal penalty effectively deters anticompetitive bid withdrawals.

The Commission also must carefully consider its bid withdrawal rules to ensure that they only penalize insincere bidders. Withdrawal penalties provide an important mechanism for policing insincere bidding. However, any bid withdrawal rules must guard against a circumstance where a legitimate, but stranded, bidder is forced to pay a penalty for what was a *bona fide* bid when entered. Any rules must recognize that circumstances change during the course of an auction, particularly if a carrier or new entrant is seeking to acquire a group of building block licenses to cover a geographic area. If that carrier is later outbid for certain critical portions of that geographic area, safety valve mechanisms should exist to allow that bidder to withdraw from the remainder of the complementary licenses and reuse that eligibility elsewhere without the sword of Damocles, in the form of bid withdrawal penalties, looming over its head. Allowing participants to withdraw *bona fide* bids based on changed circumstances will encourage the participation of new entrants into markets by providing comfort that they will not be forced to make the choice between a stranded license and stiff financial penalties.<sup>40</sup>

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<sup>40</sup> This is not to suggest that the Commission should be “soft” on insincere bidders. To the contrary, the Commission should throw the proverbial “book” at those bidders who deliberately engage in a strategy of driving up bids and then withdrawing. Indeed, the current penalties may be insufficient in such instances. Insincere bidders drive up the costs to all sincere bidders – large and small -- and must be deterred. The Bureau, however, should not throw out the proverbial “baby with the bathwater” to solve this problem.

**VI. THE COMMISSION SHOULD REVISE THE ANTI-COLLUSION RULE TO ALLOW ORDINARY COMMERCIAL DISCUSSIONS TO CONTINUE.**

One additional rule the Bureau should consider is the effect that the anti-collusion rule may have on Competitive Carriers. As many commenters have pointed out to the Commission previously, the anti-collusion rule can have a chilling effect on normal commercial business discussions which would be pro-competitive and have no direct bearing on the auction.<sup>41</sup> Indeed, the Commission itself has noted in the past that the anti-collision rule may affect the way in which “auction applicants conduct their routine business during the auction by placing significant limitations upon their ability to pursue business opportunities involving services in the geographic areas for which they have applied to bid for licenses.”<sup>42</sup> In addition, the Commission has cautioned auction applicants that “discussions concerning, but not limited to, issues such as management, resale, roaming, interconnection, partitioning and disaggregation may all raise impermissible subject matter for discussion because they may convey pricing information and bidding strategy.”<sup>43</sup> This being the case, there is a distinct public interest benefit in both limiting the period of time that applicants are subject to the anti-collusion rule by holding to a minimum the time between the filing of the short form application and the auction commencement date and to limit the scope of the anti-collusion rule as much as possible.

The current scope of the Commission’s anti-collision rule can have a chilling effect on pro-competitive discussions between applicants that are only tangentially related to an auction. Although ensuring the integrity of the auction by limiting collusion is an important goal, the

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<sup>41</sup> For example, roaming discussions or market partitioning discussions between carriers that commenced without any relationship to an auction might be curtailed during an auction out of an abundance of caution because they might have a tangential effect on a party's bids or bidding strategy.

<sup>42</sup> *Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz*, 13 FCC Rcd 374 at para. 456 (rel. Dec 31, 1997).

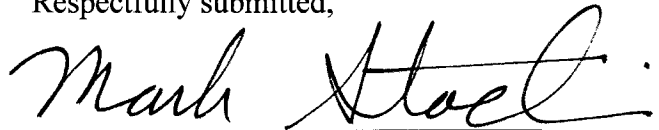
<sup>43</sup> *Id.* at ¶ 457.

Commission must not go overboard and allow anti-collusion protections to prohibit carriers' ordinary-course business discussions that pose no tangible risk to the auction process. These ordinary commercial discussions are most likely to benefit Competitive Carriers since agreements such as roaming are necessary to the provision of their services. Given that there are a limited number of long-term evolution (LTE) roaming agreements and the Commission has previously found that it benefits the public interest for carriers to engage in data roaming arrangements, it behooves the Bureau not to give the larger incumbent carriers any additional reasons to not engage in roaming, or other commercial discussions, with the Competitive Carriers. As a result, the Commission should re-evaluate the benefits of having so broad a rule rather than one which is more targeted. While bidders should not be permitted to discuss bids or bidding strategy, they should be able to engage in other ordinary commercial business discussions so long as no auction bidding information is shared. The Commission should carefully evaluate whether the benefits of the current anti-collusion rules outweigh the clear burdens they impose, particularly when the length of the anti-collusion period is substantial.

## **VII. CONCLUSION.**

RDL respectfully submits that the Commission should not use HPB or sealed bidding in Auction 96 as it would not serve the public interest. In addition, RDL submits that anonymous bidding hampers the ability of Competitive Carriers to meaningfully participate in the auction. Further, the Bureau should allow bid withdrawals. Finally, the Bureau should revisit its current anti-collusion rule to limit its impact on ordinary commercial discussions which are a necessary part of the wireless industry.

Respectfully submitted,

A handwritten signature in black ink, reading "Mark Stachiw" with a stylized flourish at the end.

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